

Docket No: RPC 0467 D

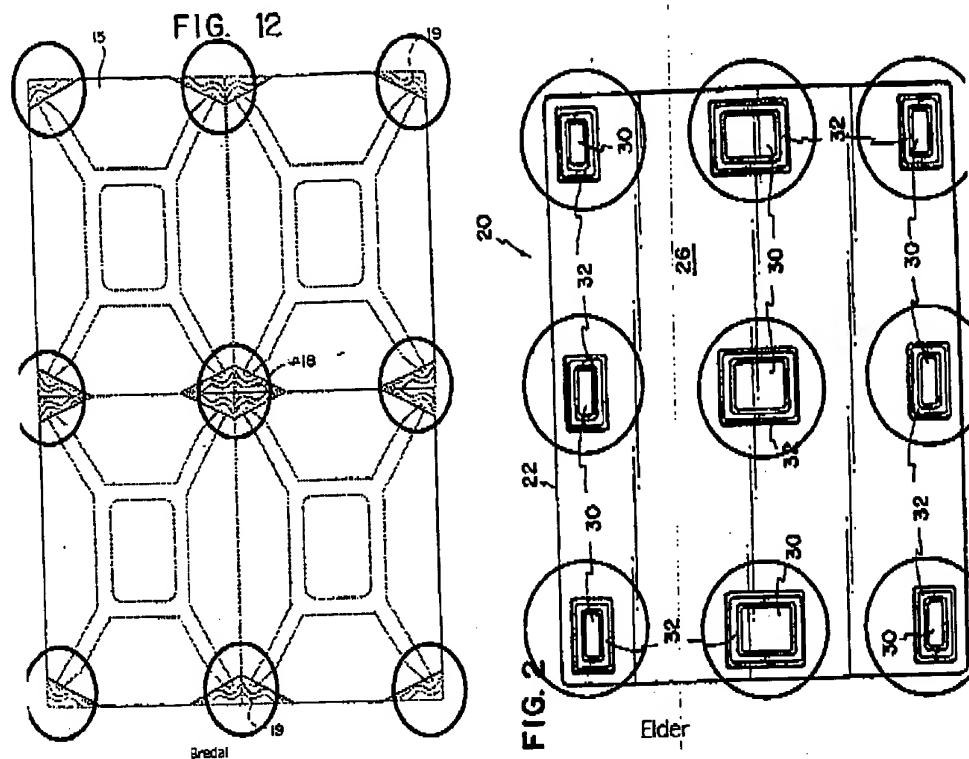
REMARKS

The Examiner has rejected all of the claims as obvious over Bredal (US 6,234,088) in view of other references. Bredal discloses a single sheet pallet manufactured with dimensions corresponding to one-quarter of the area of a standardized pallet. (col. 2, lines 46-49). Four of the quarter-sized pallets are arranged two-by-two to support a load. (Figure 12).

The Examiner has rejected claims 14-37 and 42-43 as obvious over Bredal in view of Elder (5,606,921). The Examiner appears to have shifted the burden of proof to the Applicant on the issue of obviousness, by saying, "the size of the pallet would not deter one of ordinary skill in the art to use known knowledge and engineering principles." Applicant is not required to prove that one of ordinary skill in the art would be *deterred* from the claimed invention. Rather, the Examiner must point to some suggestion in the prior art (or in the general knowledge of those skilled in the art) for making the proposed modification. The size of the Bredal quarter-pallets negates the motivation proposed by the Examiner.

The Examiner is saying that it would be obvious to modify the quarter-pallets of Bredal to include a non-peripheral foot or a side peripheral foot. The Examiner's offers as "suggestion" or "motivation" the fact that a non-peripheral foot and side peripheral feet are both shown in the full-size pallet of Elder. However, because the pallets in Bredal are one-quarter the size of the pallets of Elder, four Bredal quarter-pallets used together in the manner intended already have exactly the same number of feet as the full-size pallet of Elder and in the same positions as Elder. This is demonstrated in the drawings from Elder and Bredal below (circles added):

Docket No: RPC 0467 D



Therefore, there is no motivation for adding a non-peripheral foot or a side peripheral foot to the Bredal pallet.

The Examiner has rejected claims 38-41 as obvious over Bredal in view of Elder and in further view of Mathieu (US 1,408,114). Claim 38 recites that the cutout is substantially symmetrical about a diagonal extending from a centerpoint of the top deck to the one corner of the top deck. The Examiner admits that the legs of Bredal are not symmetrical about the specified diagonal, but states that it would be obvious to modify Bredal in view of Mathieu. The Examiner's motivation for the proposed modification is that it would "aid in stacking or nesting." However, this hypothetical motivation does not exist because the quarter-pallets of Bredal are already stackable and nestable, as is shown in Figure 9 of Bredal. The cutouts do not need to be symmetrical about the diagonal in order to stack or nest. Therefore, claims 38-41 are not obvious over Bredal and Mathieu.

Docket No: RPC 0467 D

**CONCLUSION**

Reconsideration is requested. If any fees are due, please charge Deposit  
Account No. 50-1984.

Respectfully submitted,



Konstantine J. Diamond  
Registration No. 39,657  
4010 East 26<sup>th</sup> Street  
Los Angeles, California 90023  
Telephone: (323) 262-5145  
Facsimile: (323) 269-8506

Dated: December 29, 2003